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# Transcript for Episode 20: Blind Justice: Montana's Judiciary Improved by 1972 Constitution - Threatened by Political Money

Jean Bowman

James Nelson

Evan Barrett

*Executive Producer*, [ebarrett@mtech.edu](mailto:ebarrett@mtech.edu)

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**[Begin Blind Justice-MT's Judiciary Improved by 1972 Constitution Now Threatened by Political Money]**

00:00:00

**[Music]**

00:00:03

**Narrator:** From the beginning of Montana's distinctive yet troubled history, the Treasure State was dominated both economically and politically by powerful outside interests who shipped in capital and bought control of the State.

00:00:14

Historians tell us that as the Anaconda Company and its friends ran Montana, economic and political power flowed out into the hands of distant capitalists and corporations.

00:00:26

Policy was determined in far off New York City and control of the press was rigid. Anaconda's corporate dominance in Montana's political affairs was unique in American history. For its first 75 years, Montana was a one-company State. But then big winds of change roared across the Treasure State; between 1965 and 1980 Montanans ripped off their copper collar, transforming Montana from a corporate colony into a free modern State.

00:00:55

The people finally controlled their own destiny. The pitched battle between the people and the established power structure was not easily won but fired In a Crucible of Change a new Montana was born. Join Evan Barrett and real history makers of the time as they shine the light on this remarkable era.

00:01:17

**Evan Barrett:** Welcome back to *In the Crucible of Change*. We have a very, very interesting program today. You know we are a nation of laws and not of men; we always say that. And it has real meaning.

00:01:34

It's through our government that we write laws. It's through our government that we enforce laws. It's through our government that we interpret laws and that interpretation is--belongs in the Judiciary Branch, the--the Courts of--of our systems, our nation, and our state.

00:01:52

In addition, the Fair and Equal Treatment under the law is an important element to what happens within the Judiciary. So writing the--creating the right kind of Judiciary was one of the important functions of the Constitutional Convention in 1972. So we're going to dive into that today, but in addition to that--in addition to that we're going to take a look at a current threat to the independence and the fairness of the Judiciary that is rising to the surface today and that's in the form of partisanship, huge amounts of money, and huge amounts of anonymous money, sometimes called dark money, flowing into Judicial races.

00:02:42

So we have a pair of extraordinarily talented folks helping us out here today to peel away the layers of this--these issues around the Judiciary.

00:02:51

I want to welcome Jean Bowman.

00:02:53

**Jean Bowman:** Thank you.

00:02:55

**Evan Barrett:** Jean has been with us once before. Jean was originally from Billings and was a Constitutional Convention Delegate and not just that but you were Secretary of the Convention.

00:03:03

**Jean Bowman:** Correct.

00:03:04

**Evan Barrett:** You were one of the Officers of the Convention. And you happened to be able to serve on the Judiciary Committee, so you are--actually you are the surviving member of the Judiciary Committee right now.

00:03:13

**Jean Bowman:** That is also correct.

00:03:14

**Evan Barrett:** We would have picked you anyway to come here.

00:03:16

**Jean Bowman:** Oh sure; that's--it's okay.

00:03:18

**Evan Barrett:** But by gosh--

00:03:18

**Jean Bowman:** You had no choice. *[Laughs]*

00:03:20

**Evan Barrett:** --yeah, but you know you were there when we were debating these issues. Now after the experience of being in the Constitutional Convention, Jean went to Law School and became--went and graduated from college and went to Law School and became an attorney, was a Clerk of the Montana Supreme Court, practiced for a little while, and then kind of slid into the hospital foundation work as an attorney and doing that kind of work for many, many years at St. Pete's here in Helena, at Saint--in Bremerton, Washington, and then also at St. Pat's for many years in Missoula.

00:03:53

**Jean Bowman:** Correct.

00:03:53

**Evan Barrett:** And you're retired in Missoula now?

00:03:54

**Jean Bowman:** I am.

00:03:56

**Evan Barrett:** But you're coming here regularly to help us sort through this Constitution. We appreciate it. We do.

00:04:00

**Jean Bowman:** I love it.

00:04:00

**Evan Barrett:** And joining Jean is Jim Nelson. Jim is a Retired Justice of the Montana Supreme Court and we welcome you here with your expertise and your experience.

00:04:12

**James Nelson:** Thank you.

00:04:12

**Evan Barrett:** Jim is a native of Idaho, graduation--graduate of the University of Idaho, into Military service during the Vietnam Era and then when he got out he went to George Washington University Law School in DC at nights, working during the guy--our kind of guy, a blue collar all the way; came to Montana to become a participant in his father-in-law's law firm up in the Cut Bank area.

00:04:38

**James Nelson:** Correct.

00:04:40

**Evan Barrett:** And Wilber Werner was his father-in-law. Many of us remember Wilbur. And he started that in 1974 and you stayed in practice there until 1993. During that time you spent was it 17 years as--

00:04:56

**James Nelson:** Fourteen.

00:04:57

**Evan Barrett:** --14 years as a County Attorney as well as often is the case in Montana. Sometimes the--the County Attorneys have to carry a little private practice to keep a living going. But in 1993 you were appointed to the Montana Supreme Court by Governor Roscoe and you served on there--you stayed on there until 2013.

00:05:17

**James Nelson:** Correct.

00:05:18

**Evan Barrett:** So you had 20 years and you were--ran for re-election twice unopposed and once opposed, but you were with us for that period of time. And I would say a very distinguished Justice of the Supreme Court--

00:05:27

**James Nelson:** Thank you; thank you.

00:05:27

**Evan Barrett:** --and I've always enjoyed your opinions and the--the logic behind them. And one of the things that I always liked about you as a Justice was you took the position that the law said you should take, not just based upon your personal feelings about something, and--and that's the kind of thing we need to have in the Judiciary to have it treat people fairly under the law.

00:05:50

**James Nelson:** Correct; yeah.

00:05:52

**Evan Barrett:** So here we are; thank you for joining us. And--and the--the Old Constitution--by that I mean the one that was done in 1889 had a really, really, really long Judiciary clause.

00:06:10

**Jean Bowman:** It did. It had--

00:06:11

**Evan Barrett:** Tell us about that and then what--what was the outlook when you started digging into it in the Judiciary Committee as to how to simplify it and make it into something contemporary?

00:06:21

**Jean Bowman:** Well the Old Constitution had a Judiciary article of 33 Sections as I recall--33 or 38. It was quite long. It was also quite full of statutory material which is to say very detailed explanations of how this was to happen and that was to be done and--and so on.

00:06:43

The New Constitution Judiciary Article has 13 I believe Sections. And the Committee was split 5 to 4; the 4 people who were in the Minority really wanted to get rid of all the statutory material that was in the Article. Some of it was actually not bad but it was statutory and very detailed and when you try to change a constitutional provision it's quite difficult. Changing a statutory provision can be done easily by the Legislature. They meet every two years. And so you--we wanted to clean that out, make a nice square box that had the outline of what a good Judicial system would consist of and ask the Legislature to fill in the blanks.

00:07:42

**Evan Barrett:** Uh-hm; that was your objective?

00:07:44

**Jean Bowman:** That was our objective.

00:07:46

**Evan Barrett:** You--you had an interesting Committee that you were on.

00:07:52

**Jean Bowman:** We did.

00:07:53

**Evan Barrett:** And in fact there was--one might wonder about you had Minority and Majority--it came out as Majority--Minority and Majority reports when you got--

00:08:03

**Jean Bowman:** Yeah; we--

00:08:03

**Evan Barrett:** --so there was a significant division?

00:08:05

**Jean Bowman:** There was a significant division which we could not close but I will say that I don't think a lot of effort was made to close it. And very early on we--we were--were just not very close in what we wanted to do. So the four of us on the Minority--in the Minority wrote one proposed Judicial Article. And the five people in the Majority wrote a different Article and theirs was not very scaled down from the original 1889 Constitution. Ours was--ours was much shorter and briefer.



00:08:44

**Evan Barrett:** So the five-person Majority it would be fair to say was very status quo oriented.

00:08:50

**Jean Bowman:** Very status quo; that's very, a very good way to put it Evan.

00:08:53

**Evan Barrett:** Uh-hm.

00:08:54

**Jean Bowman:** Yes; they liked it--kind of liked it the way it was. I'm not sure they were all that anxious to make any changes. But they were not anxious a lot of changes.

00:09:03

**Evan Barrett:** Well you know it's interesting that you know that it would kind of work out that way. Now I'm--I like hearing about this in this--in this manner. There's a--maybe a little mythology about the Convention that everybody came there. They sat alphabetically. They held hands saying kumbaya and what a wonderful document.

**[Laughs]**

00:09:31

**Jean Bowman:** Well to a large extent that's true. **[Laughs]**

00:09:33

**Evan Barrett:** And yet clearly there had to be give and take and push and pull inside this Convention. And clearly it must have happened in this Article in--in a way.

00:09:42

**Jean Bowman:** Well I think one of the things that happened was that we did not ever as a Committee sit down and discuss what exactly we wanted to do, how did we want to change the Article; did we like it the way it was? And so let's go have a beer. Or, these are the kinds of things that we need to get rid of. These are the kinds of things we need to change. We never did that as--as a full Committee.

00:10:09

**Evan Barrett:** So the Committee didn't establish a frame of reference so to speak for the whole thing?

00:10:12

**Jean Bowman:** That's true and there wasn't an awful lot of collegiality within that Committee which was unfortunate. But that was the way it was. I think probably there was less collegiality in that Committee probably than any of the others.

00:10:25

**Evan Barrett:** Yeah it--I guess maybe sometimes we take lessons of life from all kinds of different places. It would strike me that there's a good lesson in life that leadership can make a difference.

00:10:38

**Jean Bowman:** It absolutely can. It definitely can.

00:10:41

**Evan Barrett:** You know so a different person, not condemning the leadership--

00:10:45

**Jean Bowman:** No; no.

00:10:46

**Evan Barrett:** --a different person leading a different way might have had you all pulling in the harness together.

00:10:50

**Jean Bowman:** Well and I--I would say that Ben Berg who just--became the leader of the Minority Committee that's what he did; he said okay. What is it that we want this thing to look like when we're finished? And that's the only way you can do it. Once you know what everybody wants it to look like then you start making adjustments and compromising and offering well what about this and what about that. That didn't happen in the Committee in the whole group of Committee.

00:11:20

The other group and of course I wasn't there, but their Article came out very slightly differently than the original Article. So either they never had this discussion, or if they had it, they said gee; it's pretty good the way it is.

00:11:37

**Evan Barrett:** Did they kind of--were they kind of written separately? I mean--

00:11:41

**Jean Bowman:** Yes; oh yes. They definitely were written separately.

00:11:44

**Evan Barrett:** You were up in one room almost like you were in one room and someone else in another.

00:11:46

**Jean Bowman:** Yes; yes.

00:11:48

**Evan Barrett:** Wow.

00:11:48

**James Nelson:** Well the--the people that wrote Article 2, the--you know the Fundamental Rights, yeah that would appear to have had a completely different leadership--

00:11:57

**Jean Bowman:** Oh I would say it did.

00:11:58

**James Nelson:** That was very visionary.

00:12:00

**Jean Bowman:** And there--there was a lot of--of give and take in that Committee. Nobody didn't like anybody. It was well I don't quite agree with that. How about this? And they--that was a marvelous Committee. It--they worked very well together and the result is they came out with a very good Article.

00:12:20

**James Nelson:** Yeah; Larry [Olsen], Fritz Snyder I think in their book about the Montana Constitution say that there's some 17 Rights protected in Montana's Constitution that are not protected in the Federal Constitution--different Rights.

00:12:33

**Evan Barrett:** That's right. We have a--well we did a very nice program on that with the Chairman Wade Dahood and with the staffer Rick Applegate.

00:12:43

**Jean Bowman:** Rick Applegate; yeah.

00:12:43

**Evan Barrett:** And they really had a great discussion of that and--and that maybe is the hallmark of our Constitution, you know that--that Bill of Rights or Declaration of Rights.

00:12:53

**Jean Bowman:** But that's what happens when everybody works together.

00:12:55

**James Nelson:** Yeah; yeah, exactly.

00:12:56

**Evan Barrett:** And--and so in your case, your Committee they didn't, so come--just coming out of the gate there was a question of what is this supposed--how is this supposed to play out on the Floor?

00:13:08

**Jean Bowman:** How are we going to do this?

00:13:09

**Evan Barrett:** Because all the 100 Delegates had to consider it.

00:13:12

**Jean Bowman:** Right; so each Delegate got a copy of each proposal. And Bruce Brown, Delegate from Miles City moved that each Committee present to the Floor the Committee of the whole, a brief outline of what their Article said. So Dave Holland who was the Chairman of the Committee and the Majority gave his outline and then Bruce-- or Ben Berg from Bozeman gave his outline of our Minority proposal. And then Ben moved that the Committee of the whole debate the Minority opinion, and that passed.

00:13:59

**Evan Barrett:** That passed. It may have passed because the way he described the framework was the kind of thing people were looking toward instead of this excruciating detail.

00:14:10

**Jean Bowman:** I think you're exactly right. Most of the Delegates of the Constitutional Convention really wanted to make major changes. And of course the other one was a lot more work to--to go through Section-by-Section-by-Section reviewing it on the Floor. But in any case, the irony of it is however that ultimately it's a--it's a mixture of the two but frankly there's more of what was in the Majority report than what was in the Minority report.

00:14:42

**Evan Barrett:** It seems like by doing it the way it evolved that the--the shorter framework was opted for to start with, to review it, and then they stuffed in it key elements of the Majority thing. They ended up dropping all the superfluous and unnecessary detailed stuff from the other one by virtue of stuffing some of the key points of it into the shorter one.

00:15:07

**Jean Bowman:** I think that's an excellent description of what happened.

00:15:10

**Evan Barrett:** Yeah.

00:15:12

**Jean Bowman:** So you know--

00:15:12

**Evan Barrett:** What do they say; lawmaking is like making sausage or something?

00:15:14

**Jean Bowman:** It's like making sausage.

00:15:15

**Evan Barrett:** Well this is maybe a high-end sausage, huh? *[Laughs]*

00:15:18

**Jean Bowman:** It's a sense of the sausage though; it's still better than what we had.

00:15:23

**Evan Barrett:** Yeah.

00:15:23

**Jean Bowman:** I will say that. It has--

00:15:26

**Evan Barrett:** I do run into folks who--who have some disappointment about it but there--there are a lot of elements that came into bear on this. One of the elements that was common in a number of Articles is the question of election, the election of Judges versus non-election, how many people in the Executive Branch are you going to elect; those were bones of contention. And in other Articles they seemed to have wanted to opt for let's not take away anyone's voting because we might--it might help us lose the Constitution. And was that--? Now--now so now let's get to the core issue; election versus non-election of Judges was one of the major issues you guys dealt with wasn't it?

00:16:15

**Jean Bowman:** Absolutely. It was probably the major item that we dealt with. And people feel very strongly on each side of that issue. And I am much in favor of appointing Judges and our Constitution is--it's not a pure appointment system and it's not a pure election system. It's a real muddle and Jim knows this as well as anybody; and so it's hard to say what we have, but it's not pure what we have.

00:16:53

**James Nelson:** No; well and I'm a good example of that. I was appointed to the Court but to keep my seat up there I had to run three different times, so--. I've--I've seen it from both sides.

00:17:04

**Jean Bowman:** If he had been elected in the first place it would have simply been an election. We knew nothing about him except maybe we liked the way he looked, so we voted for him. By being appointed, he had to go through a certain process of questions and so on, so it puts Judges on very unequal panels of--of you know an elected person may be the best for the job but we have no way of knowing that. Theoretically if we've interviewed a person before he's appointed we know a little bit about him.

00:17:39

**James Nelson:** Well you go through the Judicial Nominating Committee and--

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**Evan Barrett:** So in--in effect, you got half your wish through the Judicial Nominating Commission because that was an--

00:17:51

**Jean Bowman:** And that was a new addition.

00:17:52

**Evan Barrett:** That was something new in the Constitution.

00:17:53

**Jean Bowman:** Yes; yeah.



00:17:53

**Evan Barrett:** It used to be when there was a vacancy it was just the Governor did it and he just did it. If he liked your blue eyes you got named--

00:18:01

**Jean Bowman:** Or maybe your pretty wife or who knows.

00:18:04

**Evan Barrett:** Or just a friend. I always [*Laughs*]--I always remember the--my favorite appointment story is not with the Judiciary but it's with when Tim Babcock was Governor and his Lieutenant Governor was Ted James of the same Party but they were elected separately and they had disagreements and there was an opening in the Public Service Commission. And in those days when the Governor left the boundaries of the State, the Lieutenant Governor had all the power and none of this two or three-day thing or any of that kind of stuff. And so Tim left the State and Ted appointed Ernie Steele to the PSC while he was gone. [*Laughs*] And--

00:18:43

**Jean Bowman:** And he could; yeah.

00:18:44

**Evan Barrett:** --and he couldn't rescind it. You know it was--and Ernie Steele got re-elected a few times after that, too. But the--while we're on this appointment versus election let's take a little segway here for a second and--and talk about the general premise of that, recognizing that we opted for election with a variation through the Nominations Commission whenever there was a vacancy for appointment. But Jim you recently did some writing about the election versus appointment and having gone through all these processes; kind of tell us what you--what was your venue for writing that and what--what you were looking at?

00:19:33

**James Nelson:** Well to--to be--to be short about it I had always been a very strong proponent of the elected Judiciary because I--I felt that it was good that--that people who are Justices and Judges would get out and mix with the voters and get out of their--their you know--

00:19:55

**Evan Barrett:** Get out of the Ivory Towers, yeah.

00:19:56

**James Nelson:** Get out of the Ivory Tower and get out there in the field and find out what the people think of them. And--and it's a tough process. I've done it--did it three times and it's--it's--it's tough. But in 2010 and we can talk probably more about this later, but in 2010 of course the US Supreme Court decided in the *Citizens United* case which basically unleashed the floodgates of money into elections both elections for all the Branches and in those States where Judges are elected which is about 39 States it unleashed the floodgates of money into those elections as well.

00:20:40

And the--I changed my mind about the merit system versus election because of this flood of money coming into the election process. It--it has really in my view corrupted the--corrupted the system not only in the election of Judges but the effects that--that money has had on--on judicial-decision making both in the civil law field and the criminal law field.

00:21:09

**Jean Bowman:** And perhaps respect for the Judiciary.

00:21:13

**James Nelson:** Yes; yeah.

00:21:14

**Evan Barrett:** Well we're going to dive into that in some detail here in a few minutes, but I want--but at this point at least partially because of the money situation you're now more favorably disposed toward the appointment.

00:21:26

**James Nelson:** Yeah; the article that I wrote for the *Montana Lawyer* which is the--the State Bar magazine I advocated setting up a pure merit system. And I think it's--it's somewhat different than the Missouri plan that Jean was talking about but it--if it were adopted and it would take a complete change of Article 7 by the way, an Amendment to the Constitution to have that adopted, I think that it would go about as far as it can humanly go to get politics and money out of the judicial selection process.

00:21:59

**Evan Barrett:** Uh-huh. I'm intrigued but I won't ask. I'll just pose it here kind of--maybe facetiously, which is the constraint on Constitutional Amendments being limited to this--the--a single Section of the Constitution. When you say you--to fix it you almost have to do the whole Article. It's a conundrum.

00:22:20

**James Nelson:** Yeah you'd basically have to--to--to repeal Article 7 to begin with.

00:22:27

**Evan Barrett:** Maybe--

00:22:28

**James Nelson:** And then replace it with something else and--

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**Evan Barrett:** So there's a way?

00:22:31

**James Nelson:** There's a way to do it and--and believe me the devil is always in the details. And--and the--as you very personally point out, the drafting of that would be a major undertaking by people who are actually a lot smarter than I am, so--. *[Laughs]*

00:22:47

**Evan Barrett:** Well some things that--let's get back to the Constitution before we go back into the--the big money challenge to the Judiciary and take a look at some of the things that happened in there, again recognizing Jean that the--that your framework was adopted but the innards of it were--

00:23:07

**Jean Bowman:** The innards weren't quite what we wanted.

00:23:09

**James Nelson:** --were modified substantially.

00:23:11

**Jean Bowman:** Correct.

00:23:12

**James Nelson:** So you had elected Judges--

00:23:16

**Jean Bowman:** Well we also had kind of appointed Judges. We had--we had a mess. We had a little bit of each.

00:23:23

**Evan Barrett:** Yeah.

00:23:24

**Jean Bowman:** Kind of a stew.

00:23:25

**Evan Barrett:** Yeah; well you know and--and I'll bounce this back to you. You went through the process.

00:23:32

**James Nelson:** Yes.

00:23:32

**Evan Barrett:** Of nomination by appointment with a screening and we should describe how that works. There's a Nomination Commission appointed by the Governor and the Supreme Court and--

00:23:45

**James Nelson:** Well and there's--

00:23:46

**Jean Bowman:** And the Judges.

00:23:47

**James Nelson:** --and the Judges.

00:23:49

**Jean Bowman:** And the Legislature.

00:23:49

**James Nelson:** It's made up of--it's a pretty bipartisan sort of a group of multi-disciplinary group.

00:23:57

**Evan Barrett:** Okay; so you got a group that's balanced with Judiciary input, Executive input and so on and then out of that they take--they interview people and they gave the Governor the 3 to 5 as I recall.

00:24:10

**James Nelson:** They take applications, which are a lot more complex now than they were when I was appointed. They interview the candidates and then as you say they make a recommendation of from 3 to 5 to Governor. He typically chooses one of those or she typically chooses one of those. They don't have to; he can appoint somebody else if he wants. But the Governor typically chooses from the--the--

00:24:41

**Evan Barrett:** I'm going to ask you a history question. Is it typically or so far as he always chosen?

00:24:43

**James Nelson:** So far always.

00:24:46

**Evan Barrett:** Okay; it's a pretty precarious political position to be in not to I think.

00:24:51

**James Nelson:** Oh I would think so.

00:24:51

**Evan Barrett:** But--but that process you went through it; your sense of it?

00:24:57

**James Nelson:** I think it was a good process. I think that the Committee did a good job of screening the--the candidates. In my case I believe there was five submitted to Governor Roscoe, five names, and they were all good--good attorneys. They were experienced attorneys. And one of the people in fact was a gentleman who later became--

--went on the Supreme Court, was elected to the Supreme Court, so they had a good--they had a good mix of people and--and the decision by the Governor is--

00:25:36

**Evan Barrett:** Now in a sense, if you--the theme of our entire series here is about a change from the--to the empowerment of people and away from the power being totally in the hands of the vested interests or the Anaconda Company or the powerful economic and political interests of the State. In this period there was an empowerment of people and in essence that process as opposed to one where it's just who could get the ear of the Governor was probably emblematic of some empowerment of people. There's a process here that looks very fair and very balanced.

00:26:14

**James Nelson:** Well the Committee--and Jean makes a good point; practically anybody can run for the Supreme Court. There's some minimum constitutional qualifications but they're not--

00:26:23

**Jean Bowman:** They're minimum.

00:26:25

**James Nelson:** --they're minimal. Anybody can run for the Supreme Court. Typically these races are under the radar. People don't know a thing about who they're voting for or not voting for. Typically people ask an attorney they know or maybe a Judge they know--you know who is this person; would it be good on the Court or not or she or whatever? And it works that way. But they're really under the radar--elections that are made with a great deal of--of ignorance.

00:26:51

Things have gotten worse now since *Citizens United* because of the employ of money into this. So--so the--the screening process that you go through to get appointed takes into consideration a person's experience, a person's character, a person's things that they've written you know--legal memoranda briefs, arguments that have gone to

Court. If they're a Judge they take into consideration the opinions that the Judge has written. So you get a good--a good discussion and a good analysis of who this person is and would they be qualified to sit on the Court. And you don't get that with the elective process.

00:27:35

**Evan Barrett:** Well Jean you want to hit on a list of other things you guys accomplished in there that you were happy about or unhappy about? I think we were concerned--considering thinking about--you were elected Clerk of the Court, which was something that you didn't want but--

00:27:51

**Jean Bowman:** We--yeah.

00:27:52

**Evan Barrett:** We kept them elected.

00:27:54

**Jean Bowman:** Well I think that elected people--elected officers should be representing somebody or some-- something, therefore we'd have to have elected Legislators. The Clerk of Court is an administrative position who-- who keeps things straight in the Court. And we felt like the Court should be able to interview and name the person they wanted for that position. But we lost that debate.

00:28:23

One other thing that we wanted was that we wanted the Supreme Court to have real making and supervisory control. We felt that there is really not a Court system; each Court was kind of acting on its own. And this did not happen. It--I believe that's now an Amendment. It has been incorporated into the Constitution now but at the time we passed it, it wasn't. And that was--

00:28:55

**Evan Barrett:** You were just ahead of your time.



00:28:56

**Jean Bowman:** Well right. *[Laughs]* We did not want to retain in the Constitution the Justice of the Peace Court. We wanted to--

00:29:09

**Evan Barrett:** As a constitutional entity?

00:29:11

**Jean Bowman:** --as a constitutional entity. We wanted the Legislature to define what kind of inferior Courts the State would have. We lost that one as well. And in retrospect I'm not sure that was a bad thing that--that they put it back into the Constitution, that the--the Convention did. And then those--the Minority wanted very much to have strictly appointed Justices--Judges on the merit system. And we didn't lose it completely but we, you know we got messed up in a stew and I'm still not happy with it.

00:29:52

As a matter of historical fact, at the time of the Constitutional Convention, a majority of our Judges and Supreme Court Justices had been appointed even though we had an elective system.

00:30:08

**Evan Barrett:** And that was always there because if somebody died in office or resigned--

00:30:12

**Jean Bowman:** If somebody in office they had to--

00:30:14

**James Nelson:** Retired.

00:30:14

**Jean Bowman:** --to replace him. And historically that had happened more than people were elected.

00:30:23

**Evan Barrett:** So it's always been a hybrid in a way.

00:30:26

**Jean Bowman:** It's always been a hybrid, but not acknowledged really and well we--we elect our Judges. Well okay; maybe we do but--

00:30:35

**James Nelson:** Well and I think that happens and since the Constitution where--

00:30:40

**Evan Barrett:** Same thing isn't it?

00:30:40

**Jean Bowman:** Oh indeed it has--

00:30:41

**James Nelson:** Yeah; a Judge retires mid-term a lot of them with the idea in mind that well I'm going to retire now so that Governor X can appoint my replacement--

00:30:51

**Jean Bowman:** Well exactly.

00:30:51

**James Nelson:** --because I like Governor X and--

00:30:53

**Jean Bowman:** Because they can control the way their replacement is replaced.

00:30:57

**James Nelson:** Yeah and then the--and then--

00:30:58

**Jean Bowman:** By the way they're replacing--

00:30:59

**James Nelson:** --and then of course once you're appointed that creates an immediate incumbency and--

00:31:04

**Evan Barrett:** Which has inherent value.

00:31:05

**James Nelson:** Yeah and Judge--Judicial elections being the incumbent is always--

00:31:09

**Jean Bowman:** Exactly.

00:31:10

**James Nelson:** --is always a plus.

00:31:11

**Evan Barrett:** So the Nominations Commission became a way to continue what was an already-established process of hybrid process but a little more fairly.

00:31:23

**Jean Bowman:** Maybe legitimized it a little bit and make it fairer.

00:31:27

**Evan Barrett:** Well you know if you think about it, I mean if you make--that's an improvement of significance.

00:31:31

**Jean Bowman:** Well it is.

00:31:33

**Evan Barrett:** You know and how--the--how well the Judiciary runs the basic bottom line of that thing is how do you get effective people in? And at least through the Nominations Commission you--

00:31:46

**Jean Bowman:** Yeah; I have not met of course all the Judges in this State by a long shot, but the ones I have met have to a person said how they hate to campaign. That's not what they really want to do. Now somebody running for the Legislature really hopefully does want to campaign, hopefully wants to talk to you and ask you what you think. How do you think you know da-da-da--? But that's not what Judges do.

00:32:14

**James Nelson:** It's antithetical to--to--to your whole mindset as a Judge that I'm not going to take positions on things. I'm going to--

00:32:23

**Evan Barrett:** It's not about popularity.

00:32:24

**James Nelson:** --I'm going to let the law and the Constitution and the facts of the case dictate my decision. And--  
and yet--

00:32:30

**Jean Bowman:** And then sometimes it may go against your personal wishes.

00:32:33

**James Nelson:** Oh many times. But that's what being a Judge is all about. It's fairness, independence, and impartiality. Those are the three hallmarks. And to the extent that you screw any of those three up, you weaken the integrity and the dignity of--of the Judicial Branch of government.

00:32:51

**Jean Bowman:** Well the only thing you have to answer to as a Judge is the law.

00:32:55

**James Nelson:** Correct.

00:32:56

**Jean Bowman:** A legislator has to answer to his constituents.

00:32:58

**James Nelson:** Exactly.

00:32:59

**Jean Bowman:** And if he doesn't answer the way they like it, they'll get rid of him.

00:33:04

**James Nelson:** Right.

00:33:04

**Evan Barrett:** Yeah; well--yeah. Yeah; now another hallmark of this was the Judicial Standards Commission. That was a new entity. Prior to that I--I'm trying to remember what the enforcement mechanism was whether it was--but--but the Judicial Standards Commission was--was put into the Constitution and it's the vehicle by which disciplinary proceedings are done in an organized manner.

00:33:36

**James Nelson:** Correct. And that--that Commission is basically like oh I would say like the prosecutorial and the decision making vehicle.

00:33:52

**Jean Bowman:** Kind of the HR of the--

00:33:54

**James Nelson:** It is.

00:33:54

**Jean Bowman:** --of the Court.

00:33:56

**James Nelson:** Complaints are funneled through the JNC and then that body hears the complaint, makes a decision, and then makes a recommendation to the Supreme Court and the Supreme Court actually imposes the discipline.

00:34:10

**Evan Barrett:** They do it.

00:34:12

**James Nelson:** Yeah.

00:34:12

**Jean Bowman:** But it--as originally provided for, it was open to the public. We were big on having everything transparent. But in 1980 a Constitutional Amendment said that the proceedings are--are confidential except as provided by statute. And I don't know how--how the Legislature implemented that. But there's some times that it doesn't have to be confidential apparently. But we felt like that was worth confidentiality.

00:34:46

**James Nelson:** Once--once an actual complaint is filed then it becomes public at least the allegations and the complaint. The deliberation phase of what the JNC does is not open to the public. And I've always been an advocate of transparency. I think--I think that ought to be open to the public and--

00:35:05

**Evan Barrett:** There's that little balancing act.

00:35:07

**Jean Bowman:** Doesn't it when you know that--

00:35:08

**James Nelson:** Well and it not only that but it holds the people making the decisions accountable for their decision-making process that--

00:35:17

**Jean Bowman:** Exactly; that there really is something there worth--

00:35:19

**James Nelson:** Yeah; if they--if they just get into a closed room and cut a deal and cut corners that's not what the system should be about.

00:35:26

**Evan Barrett:** Perish the thought that anything like that could ever happen. But [*Laughs*]--well--

00:35:30

**Jean Bowman:** It's not going to happen in Montana, Evan.

00:35:34

**Evan Barrett:** Now how about terms? How about the terms?

00:35:36

**Jean Bowman:** We increased the terms from six years to eight years. And we--

00:35:41

**Evan Barrett:** For?

00:35:43

**Jean Bowman:** For Supreme Court Justices and--

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**Evan Barrett:** So they used to be six.

00:35:45

**Jean Bowman:** Right and now they're eight and the District Court from four to six. And--

00:35:51



**Evan Barrett:** So as distasteful as elections are you don't have to have them so often.

00:35:54

**Jean Bowman:** You don't--right, well and you know there's such--especially if you're going to elect Judges, jeepers they're going to be spending a lot of time running for re-election. They need to be spending their time thinking about cases and giving them a longer term on the Court we felt was a good idea.

00:36:12

**James Nelson:** Well in--and that's a good point because in 2004 when I was involved in a--

00:36:17

**Evan Barrett:** Competitive race.

00:36:18

**James Nelson:** --very competitive race, I spent more time on the highways of Montana than I ever did in Helena in the courtroom. I had people driving and I'd be reading briefs in the car and making phone calls and it was brutal. My--my wife swears it took 10 years off my life and I think she's right.

00:36:40

**Jean Bowman:** And you were forced to do that because--

00:36:41

**James Nelson:** Oh I had to do it.

00:36:43

**Jean Bowman:** --yeah.

00:36:44

**James Nelson:** I had to do it. I--

00:36:44

**Jean Bowman:** That's a dumb way for him to have had to spend--

00:36:47

**James Nelson:** I lost the Primary in that race. And I--I--the next morning I went in and sat down with my Clerks and I said here's the deal. I said if I don't start campaigning full-time I'm not going to have a job and you're not going to have one, so I'm really going to--

00:37:02

**Evan Barrett:** So suck it up and help a little more. [*Laughs*]

00:37:04

**James Nelson:** Suck it up. You're going to be doing a lot more work than you did. And they did; they did a great job.

00:37:10

**Evan Barrett:** Yeah; interesting side note to this that there were an interesting advocate inside the--in testimony before the Committee to try to have the elections be partisan. Would you mention of that?

00:37:26

**Jean Bowman:** Right; yes.

00:37:26

**Evan Barrett:** Because I found that to be quite interesting.

00:37:28

**Jean Bowman:** Common Cause advocated for partisan elections and neither side bought that. *[Laughs]* I mean as if elections weren't bad enough then when you start saying well of course the Republicans think this way and the Democrats think this way, you've really lost it.

00:37:47

**Evan Barrett:** Now that's an interesting segway into some of the things under *Citizens United* because while we rejected it soundly here and it was really odd that Common Cause advanced that although I suspect it's because they maybe thought hey they're Democrats or Republicans anyway. We--we kind of all know it.

00:38:07

**Jean Bowman:** But you do kind of wonder and of course this was 40--what 2 years ago and I'm willing to bet they would not feel that way now.

00:38:15

**James Nelson:** Well let me tell you something though about--about that whole business. Elections are non-partisan. I think they should be and--and if for no other reason is that it doesn't lock a judicial candidate into some Party platform. If they were partisan, it would do that. So if you're non-partisan it doesn't do that. When you get on the Bench the public isn't so-stupid as not to know well, this fellow was a Democrat or this fellow was a Republican. We have a Justice on the Court now that--that was a Democratic Legislator. We have a Justice on the Court now that was a--a Republican Legislator so you know people know those kinds of things.

00:38:56

But having said that and I can tell you this honestly from--from my 20 years of experience on the Court, all the decisions that we ever made, all the discussion that we ever had and the deliberations that we had in deciding cases, I can tell you that politics did not ever come up once--not one time. People had different judicial philosophies. They have different views on things, views of what the law was, but politics didn't enter into our judicial making process. And I'm--I'm very proud of our Court for that.

00:39:29

**Evan Barrett:** Now *Citizens United*, some of the follow-up decision making on that has opened the door that if it's not for the filing in a partisan way it has opened the door for political Parties to endorse in the non-partisan races hasn't it now?

00:39:46

**James Nelson:** That's correct and that was--

00:39:48

**Evan Barrett:** We had a prohibition on that in Montana.

00:39:49

**James Nelson:** We did but--but there was a case out of Sanders County that went to Federal Court and the Federal Court said that as part of the--

00:40:00

**Evan Barrett:** Free Speech.

00:40:01

**James Nelson:** --free speech of *Citizens United*, political Parties can endorse judicial candidates. And that again is one of the--the reasons that I've now come to the belief that a pure merit system is the best way to go.

00:40:14

**Evan Barrett:** Uh-hm; uh-hm.

00:40:15

**Jean Bowman:** Well I can also say that never in the Constitutional Convention did politics become an issue. We sat alphabetically as you've mentioned. And nobody said well, he's a Democrat; you can expect that from--. No, no; that never happened.

00:40:31

**Evan Barrett:** In fact, I find when I'm sitting around with the remaining Delegates and they start thinking about so and so was a Democrat. No wait a minute; he was a Republican you know because--because you didn't--

00:40:41

**Jean Bowman:** Because it just didn't matter.

00:40:42

**Evan Barrett:** That idea of--and I have to say that unanimously everyone has said that the idea of not having that line down the middle, you sit on one side and we sit on the other contributed to the product and ultimately--

00:40:56

**Jean Bowman:** Oh it did.

00:40:56

**Evan Barrett:** --its passage too.

00:40:58

**Jean Bowman:** And I don't think that will work in the Legislature. In fact, it probably shouldn't, but I think for the Court it definitely should not be political at all.

00:41:08

**Evan Barrett:** But just a little side bar on that thing, too is that--is that the--the predominant opinion of Constitutional Convention Delegates though it didn't end up that way was in favor of a unicameral Legislature and the only one we have in the United States is Nebraska and it's non-partisan. So you never know but it didn't prevail because it was on the ballot remember and rejected pretty soundly.

00:41:34

**Jean Bowman:** Oh yeah.

00:41:34

**James Nelson:** Well I think some of these local races for County Commissioner and some of the--

00:41:38

**Evan Barrett:** Now the local--yeah.

00:41:39

**Jean Bowman:** Some city elections are non-partisan.

00:41:40

**James Nelson:** --start to go make them non-partisan.

00:41:41

**Evan Barrett:** Most of them are non-partisan.

00:41:44

**Jean Bowman:** And the argument is what's Democrat or Republican about how the garbage is collected?

00:41:49

**James Nelson:** Yeah.

00:41:50

**Evan Barrett:** Yeah; filling--

00:41:51

**Jean Bowman:** It's pretty hard to make an argument--

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**Evan Barrett:** Filling potholes.

00:41:53

**Jean Bowman:** Yeah; yeah, striping the street.

00:41:56

**Evan Barrett:** Grating the roads or whatever yeah. Okay; well you know let's--let's bridge over into the *Citizens United* thing because we've kind of talked quite a bit about some changes we made which were modest improvements on the '89 Constitution. There was a great simplification that occurred.

00:42:14

**Jean Bowman:** Indeed there was.

00:42:14

**Evan Barrett:** But there's some--some modifications--some things that were improvements, some things that didn't happen, but thrust upon us from the Federal level, the US Supreme Court through *Citizens United* and subsequent decisions, there's some pretty challenging times for the Judiciary in terms of impact of money and heavens, to think money could impact something politically. But when the politics or Judicial politics--it impacts those kinds of decisions. Jim this is something you've dived into pretty heavily since you've left the Court haven't you?

00:42:49

**James Nelson:** I have because I--I think it is the--the biggest threat that the Judicial Branch of government faces right now is--is this dark money and--and the super-pact money that is driving not only the election of Judges where

they're elected, but it's also driving the way Judges make decisions. And I--I guess I could at this point cite the two empirical studies that--I have them here--

00:43:18

**Evan Barrett:** Because it doesn't go with--when you have--once the money--the money was always there but it was always constraints, limited--but once it became unlimited and powerful the impact was more than just be elected, it started to impact decisions.

00:43:31

**James Nelson:** Right; exactly. There's--there's two studies and I'm just going to throw them out on the table here.

00:43:37

**Evan Barrett:** I will hold this up so they can maybe--

00:43:36

**James Nelson:** These were both empirical studies and by that I mean they're--they're actually studies that are based on evidence and analysis and a lot of number-crunching of data from all 50 States is involved in these studies. Both are sponsored by the American Constitution Society. The first is the study called *Justice at Risk*; it's written by a law professor at Emory University by the name of Joanna Shepherd and that study demonstrated that as regards to the civil justice system, money coming into judicial races affects not only who is elected because of campaigning and negative ads and that sort of thing, but it also affects the way Judges make decisions. And not surprisingly, the more money that is spent for or on behalf of a judicial candidate the more likely that person is going to vote for the people that paid the money when it comes to make the decision.

00:44:34

The second--that was released in June of--yeah June of 2013; the second called *Skewed Justice* was just released last October, October 2014. Same sort of empirical study written by Joanna Shepherd and a fellow by the name of Michael Kang who is also a law professor; that study dealt with how judicial decision-making is effective in criminal law cases. Now keep--keep in mind that--that our Constitution protects the rights of criminal defendants



to a great extent. And every one of us wants that sort of protection if we're charged with a crime or our loved one is and we go--we go before the Court.

00:45:18

What this study showed was that at least in marginal cases and a lot of them are marginal cases, the Judge is going to look over his or her shoulder before voting on the case because you know you make an unpopular decision, what you're going to be faced with in the next election is this flurry of Willie Horton type ads. That happened in--in the last election between Justice Wheat and--and Larry Van Dyke. One of the negative ads that ran against Wheat was that he voted to I believe release a person that beat his wife or something like that. They never tell you anything about the case. They never tell you anything about the context. They never tell you anything about the law--

00:46:11

**Jean Bowman:** Heaven forbid.

00:46:11

**James Nelson:** --that governed the Judge's decision. All they tell you is this soundbyte result. And of course the public says oh my god; you know I don't want to vote for somebody that's letting child--child molesters and--and criminals back into society. They're out the window.

00:46:27

**Evan Barrett:** So the result of that kind of potential for money to be used against you in negative advertising that creates an artificial harshness perhaps in the--?

00:46:36

**James Nelson:** It creates a paranoia that--that is--is of concern when the Judge says well this could go either way. It's going to go this way because I'm not going to be saddled with this decision during the next election. That's how that works.

00:46:50

**Evan Barrett:** I could give you five years or I could give you 15.

00:46:53

**James Nelson:** Yeah; although it--

00:46:55

**Evan Barrett:** In the sentencing or not?

00:46:56

**James Nelson:** --it's--it's so far been the studies involved in the High Court, the Appellate Courts. And I'm sure it makes the same difference in the Trial Judges, too. I mean and to point out the great example of--

00:47:11

**Evan Barrett:** Now in the case of the--the first study, the *Justice at Risk* study, assumedly people putting big, big money into judicial races have an economic interest.

00:47:26

**James Nelson:** Sure.

00:47:28

**Evan Barrett:** And then that's--

00:47:28

**James Nelson:** They do.

00:47:29

**Evan Barrett:** --often the nature of cases that come before the Courts where you're balancing that economic--.

00:47:33

**James Nelson:** It is that and let me--and I've--I've talked to different groups about this and I--I can't cite anything because it's--it's my own conclusion but I think it's an accurate one. Right now because of *Citizens United* and the money that flows into political races all over, State level, National level, corporate America pretty much owns the Legislative and Congressional Branches of government. They pretty much in most States own the Executive Branches and the Presidency. That's--that's pretty much a foregone conclusion.

00:48:12

If these groups, the Koch Brothers, the Americans for Prosperity, all these shadow groups, if they want to control government completely they've got one--one Branch to go and that's the Judicial Branch. And if you can control the Judicial Branch you have no more checks and balances left. You've got complete control of government. You've got an oligarchy. You can do what you want. And that's what they want to do.

00:48:43

**Evan Barrett:** Uh-hm and that's about economics.

00:48:45

**James Nelson:** It's about economics and it's about money.

00:48:46

**Evan Barrett:** And right now I often think that our final line of defense for rationality and fairness is in the Courts. And if you lose that--

00:48:56

**James Nelson:** If you lose that we all lose. And--and 99--just about 99-percent of all cases in the United States, actual cases are dealt with by the State Courts, not the Federal Courts, but the State Courts. They--they--that's where the rubber meets the road, and if you--if these groups can control those Courts they've got control of--

00:49:21

**Evan Barrett:** There's even a--

00:49:23

**James Nelson:** --the US.

00:49:23

**Evan Barrett:** --in the most recent Supreme Court race we had in Montana which was in 2014 which was--ended up being incumbent Mike Wheat who was running for the first time after being an appointee against a fellow named Van Dyke who was originally a Montanan but had been out of state and somehow came back in and--and he had huge amounts of dark money going for him. And it included a--I want to mention a--a Republican Party organization that's now formed to--?

00:49:56

**James Nelson:** Well to be fair about this--

00:49:58

**Evan Barrett:** Both sides had money.

00:49:59

**James Nelson:** --and this incidentally was the--was the most expensive Supreme Court race in Montana history--that one race, upwards of \$1.3 to \$1.5 million came into that race from the outside. It dwarfed. That amount of money dwarfed what the candidates themselves raised which is \$250,000 or something like that.

00:50:21

**Jean Bowman:** But it forced the candidates to do some big advertising that they would not have otherwise had to do.

00:50:27

**James Nelson:** And there was a lot of negative advertising. The--Wheat had I think around six hundred and some thousand dollars in pact money. Van Dyke had the--the--some \$400,000 from the Republican State Leadership Committee, RSLC, and the Koch Brothers Organization and Americans for Prosperity threw in another \$200,000 into his race. And then there were some incidental pacts that threw money in on both sides, too. But--but \$1.3 to \$1.5--or nearly 4 to 5 million, \$1.5 million came into that one race.

00:51:14

Now the scary part is this; that was one race. In the 2014 election cycle or '16 election cycle we've got three seats up on the Supreme Court for election. Justice Pat Kotter is retiring so she's going to have an open seat. The Chief Justice is up for election, Mike McGrath, and Justice Shea, the incumbent is up for election. So you got three seats there. And--and it doesn't take much of an imagination to--to realize that if some of these organizations want to change the ideological makeup of the Supreme Court, if they want to control the Supreme Court you know you come into Montana and you drop \$20 million into these races, the--and voila. You've got a whole different Supreme Court.

00:52:02

**Evan Barrett:** And by the way that amount of money as much as it is Montana terms is chump change.

00:52:06

**James Nelson:** It's chump change in some of these other elections.

00:52:07

**Evan Barrett:** Often--often the large organizations look at Montana, pardon the term, but they call it a kind of a political cheap date. You know we can get by without spending too much money--\$1.5, \$1.6 million, not too much money--

00:52:20

**Jean Bowman:** Million here, a million there.

00:52:23

**Evan Barrett:** --yeah and guess what? And so are we for sale is an interesting question.

00:52:27

**James Nelson:** Yeah; it is.

00:52:27

**Evan Barrett:** I think it came to the fore pretty strongly in the last election and it became almost a subject of the election but you never know. Money buys advertising. It's scary, pretty darned scary.

00:52:39

**James Nelson:** Oh sure. These people they've got--and these are--these are very experienced organizations. I can tell you having been through the process it--it's hard work to produce a good TV ad. I mean and it's expensive.

00:52:54

**Jean Bowman:** And it takes a lot of time.

00:52:55

**James Nelson:** Oh it takes people and equipment and just for the ordinary run of the mill candidate like I was it--it's an impossible task almost. But these people do this for a living. They've got--they've got high-end marketing firms and--and videographic firms that they can turn these ads out in a heartbeat.

00:53:16

**Evan Barrett:** Now we just got some people would say lucky but maybe it's fortuitous, maybe it's just good skilled legislative activity on the part of the Governor and a formed-Legislative Majority; it was representative of kind of the middle of the road of both Parties that we just passed a law that at least if it holds up in the Appellate Courts, eliminates the darkness of the money although it doesn't eliminate the amount of the money. Is that right?

00:53:44

**James Nelson:** No, no; yeah the Disclosure Act I think is a good--is a good first step and that was passed by the last Legislative Session and a very nice bipartisan effort. Yeah; I suspect it will be challenged in the Federal Courts and what's going to happen I don't want to try to predict at this point but there is--there is that. It doesn't affect the amount of the money either you're right. And a lot of these organizations can always figure out ways around it to--to keep people anonymous. You know corporations, General Motors and some of these corporations, they give a lot of money but they don't give it directly. They funnel it through trade organizations and pacts so you never know the X,Y,Z Corporation has spent \$200,000 on somebody's race.

00:54:33

**Jean Bowman:** I suspect they're a bit careless in trying to follow-through to see exactly how their money was spent. I may be wrong; that's a guess, but--.

00:54:39

**James Nelson:** Oh yeah.

00:54:42

**Jean Bowman:** It wouldn't surprise me.

00:54:44

**Evan Barrett:** Now a couple--let me just jump to a couple quick issues. We're getting close to the end here. There was a little dip of the toe into the water on public financing that John Schultz did. But it didn't have any traction.

00:54:56

**Jean Bowman:** Well he got a fair number of votes but not enough to count. He proposed an Amendment from the Floor. He was very much in favor of electing Judges. And one of the arguments that was--was given was that it's

expensive to run. Judges don't want to run and so on. So Jack Schultz proposed that judicial elections be funded by the State and that failed.

00:55:29

**Evan Barrett:** But that was part of his ways to push people toward elections.

00:55:32

**Jean Bowman:** Right to push people towards elections. It got rid of the argument that Judges don't want to have to spend money or ask people for money. And so that part--we still got an election of Judges, but we lost the fact that the State was going to pay for those elections.

00:55:49

**Evan Barrett:** Now another issue that came--that evolved out of this thing, out of the Constitution was the five-member Court eventually became a seven-member Court.

00:55:59

**Jean Bowman:** Yes; we said in the report that was adopted that the Legislature could increase the number of Courts up to seven and they did that.

00:56:09

**Evan Barrett:** Up to seven and they did it pretty rapidly I think.

00:56:11

**Jean Bowman:** Yes; they did that I think in the very first Session.

00:56:12

**Evan Barrett:** Now having sat on the Court, now you practiced, but having sat on the Court, what's your sense of the go five to seven? Has that been a good move?



00:56:19

**James Nelson:** Oh I think it was absolutely necessary. At the time it was done the Courts' caseload was quite a bit higher than it is now but when you've got seven different people up there, I think you get a better mix of--of opinions and discussion and deliberation. And I think you decide better cases.

00:56:42

**Evan Barrett:** You also though have a--the ability to deal with more cases and we had a caseload problem for a while didn't we?

00:56:47

**James Nelson:** Yeah; yeah and that's been pretty much resolved. That's--when Chief Justice McGrath came onboard that was one of his--his efforts right off the bat was to get the caseload down and get--

00:57:00

**Evan Barrett:** Caseload down and--and the use of mediation and arbitration and stuff has helped a lot too.

00:57:06

**James Nelson:** Yeah; alternative dispute resolution has--has reduced the caseload and as I've mentioned to you before, I think another thing that's reduced the caseload which is not a good thing is that the litigation and hiring attorneys has just become so prohibitively expensive that ordinary people can't do it.

00:57:25

**Jean Bowman:** Can't do it. Well because we don't have an Intermediate Appellate Court everything that is--is submitted to the Supreme Court has to be heard by--they don't have the option--

00:57:35

**Evan Barrett:** Unlike the US Supreme Court; they don't say--

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**Jean Bowman:** Exactly; they don't--

00:57:37

**Evan Barrett:** --we're not going to take this on.

00:57:38

**Jean Bowman:** --they don't say sorry buddy. We're not going to take your case. They have to take it.

00:57:40

**Evan Barrett:** They got to take it.

00:57:41

**James Nelson:** The US Supreme Court writes about 75 opinions a year.

00:57:45

**Evan Barrett:** How many does the Montana Supreme Court write?

00:57:47

**James Nelson:** Anywhere from 300 to 400 a year.

00:57:51

**Evan Barrett:** Yeah; well it's time for us to wrap up what has been a very interesting discussion. And it is of great import to every citizen of this country that our Judicial System operates fairly on behalf of everyone. That's a--that's the hallmark of our--one of the hallmarks of our democracy. And it's a bit frightening about the challenge that we've been talking about, the money challenge. Isn't it interesting that money is such a big challenge?

00:58:21

We appreciate your sharing with us your wisdom and experience from the Convention, your wisdom and experience from serving on the Supreme Court, and it looks like we're in good hands for the time being but we're--I guess we have to be vigilant about the money in politics. Thank you for joining us and for you watching thanks for joining us *In the Crucible of Change*. We'll see you next time.

00:58:46

[*Music*]

00:59:45

**[End Blind Justice-MT's Judiciary Improved by 1972 Constitution Now Threatened by Political Money]**